

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 4

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 23, 2001 at
4:00 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Rep. Jim Shockley, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Rep. Steven Gallus (D)

Members Excused: Rep. Darrel Adams (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Gay Wells, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 4; 3/20/2001

Executive Action: SB 4

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 4

Informational Testimony:

Al Smith, MT Trial Lawyers Assoc.
LeRoy Schramm, Legal Counsel, MT University System

Questions and Comments from Committee Members and Responses:

CHAIRMAN DUANE GRIMES explained the purpose of the Conference Committee. Because the MT Supreme Court held that "at-will" employment is impliedly repealed, SB 4 is intending not only to repeal the "at-will" statute, but it will also establish that a probationary period is specified as an "at-will" issue in the Wrongful Discharge Act.

This began with a twelve month probationary period plus there was an amendment put on in the Senate to take care of the University System employees. On page 2, lines 11-14, that language was suppose to take care of the University System employees who are work study students. The Senate was ambivalent about that if it was just a university issue. There was some concern on the Senate floor that this might be a loophole for some employer to call all their employees temporary.

He had a letter **EXHIBIT(ccs66sb0004a01)** addressed to **REP. JIM SHOCKLEY** from **LeRoy H. Schramm**. He read some of the pertinent parts. "The House amendments leave the University System's thousands of work study student employees, who were formerly considered to be "at-will" employees, in an uncertain status. Under the current SB 4 such employees will attain "for cause" status in the midst of an academic year. If SB 4 were to become law in this form, the University System would be left with two options for these temporary student employees. First, it could create specific term contracts for them. But if the University did so these temporary student employees could only be terminated "for cause" during the entire term of the contracts. And, as many wrongful discharge cases show, having "cause" to terminate someone is one thing, and being dragged into court to prove it is another; the latter being time consuming, uncertain and, win or lose, expensive. Second, the University could adopt a specific probationary period for its work study employees. This also is not a good option since the creation of a probationary period implies that upon the completion of the probation the employee attains "permanent" or "for cause" status; the very thing we wish to avoid for these short term employees."

That didn't really answer his question. He then asked why couldn't they adopt a 12 month probationary period on the side.

REP. SHOCKLEY felt that the procedure now is to get them to sign a contract and they frequently don't. There needs to be a contract somewhere. The University was concerned about line 9. If they use work study people, there should be a contract to limit them to a specific period of time.

CHAIRMAN GRIMES said that the letter is saying a permanent contract equates to a permanent job. Then they could only terminate "for cause." That does not make sense.

SEN. BOB DEPRATU said a contract can say the person is hired for 12 months but under certain circumstances it could be less.

John MacMaster offered that if a person is in the probationary period, they can be fired for no reason.

Al Smith offered a letter from the MT Trial Lawyers **EXHIBIT(ccs66sb0004a02)**. He then answered that they have had contracts where a two week notice for no cause is written.

CHAIRMAN GRIMES asked **Mr. MacMaster** to explain if there was anything to prevent the University from writing contracts just like **Mr. Smith** had just mentioned.

Mr. MacMaster responded that on lines 7 and 8, it states that, "if an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire. This would show what would happen if the employer does not establish a specific probationary period.

REP. SHOCKLEY declared that the University could establish a policy concerning probationary periods for work study programs. Many are concerned about being sued. The amount of wages, at minimum wage, is not worth suing over.

SEN. VICKI COCCHIARELLA stated it seemed that everyone was agreeing to the House amendments.

CHAIRMAN GRIMES said yes, it seemed so at this point. He explained his reasons for bringing the bill into a Conference Committee. It would allow the University System to have one last shot.

SEN. COCCHIARELLA stated that basically the issue is they do not know how to deal with their work study students. She did not sympathize with their dilemma. Work study students sign all kinds of papers. This could be made a part of their policy and take care of any concern on their part. A work study student is on a probationary or "at-will" status.

CHAIRMAN GRIMES said their other argument was the change back to 12 months. It would be good for all small employers in the state who do not have formal written policies. Employers would have 12 full months to evaluate a new employee before the employee

attains a "for cause" termination rights. So, aside from the University System, would the Committee want to talk the House into going back to 12 months. He pointed out 12 months would allow Montana's natural resource ranchers, who have seasonal work, to hire temporary help in an "at-will" status.

SEN. COCCHIARELLA offered that there are contracts that could handle this situation.

REP. SHOCKLEY said that as a rancher, when they hire seasonal work, they don't even have to write that down. That is an oral contract.

CHAIRMAN GRIMES thought there could be some language added in line 11.

SEN. BOB DEPRATU said that 90 days had been used forever and if an employer can't decide in 90 days whether to keep a person on or let them go, that is not very good.

John MacMaster held that if the Committee takes the bill back to its original form, it would not make sense. If the House amendments are left in and change the six months to 12 months, that would be okay.

Al Smith confirmed that there are certain contracts that cannot be oral and must be written if longer than a year. Less than a year, an oral contract is acceptable.

CHAIRMAN GRIMES did not understand what the University's problem was if that was correct. Most students work just during the school year which is less than 12 months.

John MacMaster offered that the University goes looking for problems. They aren't facing lawsuits. They have never been sued. They want the Legislature to pass a statute that would address their concerns.

CHAIRMAN GRIMES explained to **LeRoy Schramm** what the Committee had been talking about. Basically, under current law, any oral contract is good if less than 12 months. In this bill, anything specified, even if it is longer than six months would be valid. The University System seemed to be covered. The University could specify a different probationary period either by contract or by policy.

Al Smith explained that, as discussed, even an oral contract for services less than 12 months is acceptable. The University might have a problem with the oral contract. A professor might tell a

work study student that as long as the student is at the University, he/she would have a job in his department. It would be better to have it in policy. If the student is put on a specific-term contract, then the University would have to have cause to terminate them during that contract.

SEN. COCCHIARELLA reiterated that the student situations are always "at will." The student can leave or the University can end their employment. She asked why the University couldn't do that.

LeRoy Schramm said that one cannot have an indefinitely "at will" contract.

SEN. COCCHIARELLA said that students are never hired for an indefinite period. They don't go more than 12 months. Each year they have to sign for their work study. They have to re-qualify every single year.

LeRoy Schramm offered that the University could state that each new year begin a new employment and not a continuation of last year's employment. He did feel that would make the student perpetually on probation and and thought the Supreme Court might not like that.

REP. SHOCKLEY stated that no one would sue the University over this. There is no money in that.

CHAIRMAN GRIMES thought there might be ramifications on unemployment when someone becomes a permanent employee and is not released for cause. They might not be able to sue but they could allege they were released not for good cause and collect unemployment.

LeRoy Schramm said there was an exception in federal law for work study students. That would not be a problem.

REP. SHOCKLEY suggested that lines 11-14 be re-inserted.

LeRoy Schramm felt that would be good. The words "not to exceed 12 months" could be inserted after the word "basis."

John MacMaster explained why lines 11-14 were taken out. There was testimony in House Judiciary that showed this language was subject to abuse. The computer dot com companies were brought up. A person could work there for two or three years and they were still temporary and still on probation. Lawsuits have been started over this.

SEN. COCCHIARELLA was concerned about putting lines 11-14 back in because of the possibility of abuses.

SEN. DEPRATU offered that if one were just hiring for a regular, on-going position, those lines would cover that.

CHAIRMAN GRIMES offered to insert the word "temporary" on line 11 after "specific."

SEN. COCCHIARELLA felt that after hearing the testimony she was not comfortable with re-inserting these lines or the extra words. Telemarketing jobs at minimum wage are notorious for keeping their people on a temporary status.

CHAIRMAN GRIMES said that these lines would make people permanent after 12 months no matter what the company would say at the beginning of the employment. Whereas, right now, it could go on endlessly. This would limit it to 12 months. This would be a more honest way to do it because otherwise that same company could say they would put them on probation for 12 months.

John MacMaster said to remember this would make them a temporary employee for purposes of the statute that says you can only discharge a person for cause except a person on probation. This would not make them a temporary employee for any other reason.

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The committee felt they were heading in the right direction. **Al Smith** was asked if there were some way to tighten the language to make sure the typical fly-by-night companies can't use this as opposed to the probationary period.

Al Smith said it did not make any difference. If they are temporary, they are probationary. The courts would look at this as their first presumption and the employees would fall under part (b). Employers are going to have to do something to designate a person as temporary.

CHAIRMAN GRIMES offered to change the "presumption." He said that lines 11 and 12 should be re-inserted and add "as confirmed by a contract."

John MacMaster said lines 13 and 14 didn't really add anything.

LeRoy Schramm also felt that lines 13 and 14 (the second sentence) did not add anything. He explained why it was in there in the first place. When this section had no limit and you could have a fairly long, specific assignment, the employer still might

want to create some sort of probationary period. This was meant to allow that kind of situation. If a limit is added, the need for the last sentence disappears.

SEN. COCCHIARELLA wanted to know the purpose of the language that the House took out and what the Committee is trying to put back in could have unintended consequences.

CHAIRMAN GRIMES offered that the Committee is trying to help the unsophisticated employer who does not have a probationary period and wants to hire someone on a temporary basis, to allow them to have something other than a presumptive six months.

SEN. COCCHIARELLA was concerned about the person who does not know their rights. Employers need to say the job is temporary or have a contract stating it is a temporary job.

CHAIRMAN GRIMES offered that an oral contract for a temporary job is sufficient to assume probation.

Al Smith stated that a person hired for a temporary position would have a hard time arguing in court that he was supposed to be a full time employee when there was no more work to be done.

EXECUTIVE ACTION ON SB 4

Motion: **REP. SHOCKLEY MOVED THAT SB 4 BE AMENDED as follows:**

Section 2, (c) An employee who is hired on a temporary basis NOT TO EXCEED 12 MONTHS for a specific assignment or project is presumed to be a probationary employee for the entire period of the temporary assignment or project.

Discussion:

SEN. COCCHIARELLA said if someone is hired for a temporary assignment that is 13 months long, then they would fall into the six month probationary period, unless there is another policy.

CHAIRMAN GRIMES said that once they go past 12 months, they are a permanent employee.

LeRoy Schramm offered that if someone is hired for a specific term that is stated such as 13 months or whatever, they would be excluded from this statute.

SEN. DEPRATU felt the language was good for employers. As an employer it is necessary they be specific; but as an employee it is their responsibility to determine exactly what the conditions

are that they would be signing up for. He has interviewed many potential employees and one of the first questions is: "Is this a permanent position or temporary?"

Al Smith said that if a person is hired on a temporary basis and there is not a contract, the statute sets it at 12 months. After that person has worked 12 months, they are past probation.

CHAIRMAN GRIMES restated the amendment. A presumptive probationary period has been created for six months for those employers without a written contract or policy for the hiring of a person for a temporary position or a specified period of time.

Vote: The motion that **the AMENDMENT TO SB 4 BE ADOPTED** carried 5-0.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. DUANE GRIMES, Chairman

MARY GAY WELLS, Secretary

DG/MW

EXHIBIT (ccs66sb0004aad)